



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/827,565 | 04/19/2004 | Joseph C. Eder | 1001.1750101 | 3215 |
| 28075 7590 05/08/2009 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420 | | | | |
| EXAMINER | | | | |
| BOUCHELLE, LAURA A | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3763 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 05/08/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,565

Applicant(s)

EDER, JOSEPH C.

Examiner

LAURA A. BOUCHELLE

Art Unit

3763

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 10-30 is/are pending in the application.
- 4a) Of the above claim(s) 17-27,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,10-16,28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Cragg et al (US 6146373). Cragg discloses a device including a first tubular member 82a, a second tubular member 84a, the outer surface of the second tubular member being secured to the inner surface of the first tubular member, the distal end of the second tubular member extending beyond the distal end of the first tubular member. See Fig. 9. The steps of providing these features are inherently disclosed.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-5, 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zadno-Azizi et al (US 6022336) in view of Banka (US 4299226). Zadno-Azizi discloses an intravascular catheter comprising a first tubular member 20 having an inner wall surface, a second tubular member 22 having an outer wall surface, the distal end region of the second tubular member extends distally beyond the distal end of the first tubular member, and a microcatheter 24 disposed in the lumen of the second catheter.

3. Zadno-Azizi fails to disclose that the outer wall of the second tubular member is bonded to the inner wall of the first tubular member. Zadno-Azizi does disclose that the configuration shown in Fig. 2 is an ideal condition that maximizes the lumen pathways (col. 7, lines 60-65, col. 8, lines 46-48). Therefore, it would have been obvious to one of ordinary skill in the art to fix the tubular members together in the disclosed orientation to maximize the lumen openings to ensure that the viscous fluid can flow through the lumen and the flow rates can be reliably determined.

4. Claim 1 calls for the second tubular member to extend about ten centimeters or more distally beyond the distal end region of the first tubular member. Zadno-Azizi discloses that the second tubular member extends past the first tubular member a distance sufficient to span an occlusion, but fails to disclose the specific distance. Banka teaches a device having a first and second tubular member, wherein the second tubular member extends at least 10 centimeters beyond the distal end of the first tubular member so that the device can be used to clear an obstruction. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention that the second tubular member of Zadno-Azizi would extend at least 10 cm beyond the distal end of the first tubular member as taught by Banka because that is the distance required to treat an occlusion in a vessel.

5. Claims 3-5 call for the first and second tubular members to be adhesively bonded, co-extruded, or thermally bonded. These claims are considered to be product by process claims. These claims are not limited to the manipulations of the recited steps, only the structure implied but the steps. The patentability of a product does not depend on its method of production. See MPEP 2113.

6. Regarding claims 10-12, Zadno-Azizi discloses that the tubular body may include a reinforcement structure formed of a braid or coil (col. 9, lines 50-55). While this feature is disclosed as being included in an embodiment not relied upon in the above rejection, it would have been obvious to include the reinforcement structure in all embodiments because it facilitates insertion of the device through the vasculature.

7. Regarding claim 14, it would have been obvious to one of ordinary skill in the art at the time of invention that the distal end of the second tubular member extend 20-40 cm beyond the distal end of the first tubular member so that the device may be used to treat a larger occlusion.

8. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zadno-Azizi in view of Banka in view of Belden (US 5409455). Claim 15 differs from the teachings above in calling for the first and/or the second tubular member to include a taper. Claim 16 calls for both tubular members to have a tapered region that are disposed in an overlapping arrangement. Belden teaches an intravascular catheter including a first 4 and second tubular member 5, the first tubular member having a tapered region and the second tubular member having a tapered region 13, the first and second tapered regions overlapping. See Fig. 5. This tapered configuration allows the device to be inserted through the vasculature gently without damaging the vessel wall. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Zadno-Azizi to include overlapping tapered portions as taught by Belden so that the device can be inserted through the vasculature without damaging the vessel wall.

Response to Arguments

9. Applicant's arguments with respect to claims 1-16, 28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle
Examiner
Art Unit 3763

/Laura A Bouchelle/
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763